

NP



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,200	04/21/2000	James R. Bonds	3029-108	7068

7590 03/29/2002

Gerald Levy  
Pitney Hardin Kipp & Szuch LLP  
20th Floor  
711 Third Avenue  
New York, NY 10017

EXAMINER

GUADALUPE, YARITZA

ART UNIT	PAPER NUMBER
----------	--------------

2859

DATE MAILED: 03/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/556,200

Applicant(s)

BONDS ET AL.

Examiner

Yaritza Guadalupe

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amendment filed January 17, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 2, 4 - 6, 12, 14 and 15 are finally rejected under 35 U.S.C. 102 ( b ) as being anticipated by Spirg ( US 4,459,046 ).

Spirg discloses a temperature indicator comprising a layer of material ( 12 ) which substantially irreversibly changes from a first appearance to a second appearance in response to exposure to a threshold temperature ( See Column 2, lines 50 – 53 ), wherein a first portion of said layer of material is initially free from exposure to said threshold and has said first appearance, and wherein a second portion ( 14 ) of said layer of material is initially exposed to said threshold temperature and has said second appearance ( See Column 3, lines 4 – 6 ), whereby said first portion and said second portion form a visible pattern of uniform appearance. Spirg also gives the option of irreversible fuses in response to threshold temperature ( See Column 2, lines 35 – 42 ). Spirg discloses an indicator which can be considered a label ( 10 ) including a support surface ( 16 ), an adhesive layer ( 18 ), and where the visible pattern includes a selected color or code ( See Column 2, lines 11 – 19 ). Spirg discloses an indicator which is

Art Unit: 2859

considered to be exposed to said threshold temperature by an indirect thermal contact since mention the possibility of rupture under external forces ( See Column 1, lines 14 – 19 ).

3. Claims 1 and 11 are finally rejected under 35 U.S.C. 102 ( b ) as being anticipated by Arens ( US 4,428,321 ).

Arens discloses a thermally activated indicator including an absorptive layer ( colored stratum layer ) with a first pattern printed thereon, a second pattern ( coating ) with irreversibly fusible material on a surface of the absorptive layer over said first pattern, thereby partially obscuring said first pattern, and wherein said fusible material, upon exposure to a threshold temperature, melts and is absorbed into said absorptive layer, thereby exposing said first pattern to view ( See Abstract and Columns 2, lines 17 – 42 ). Arens discloses an indicator which can be considered to be exposed to said threshold temperature by direct thermal contact.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7 – 10 are finally rejected under 35 U.S.C. 103 ( a ) as being unpatentable over Spirg ( US 4,459,046 ) in view of Haas et al. ( US 5,719,828 ).

Spirg discloses a temperature indicator as stated in paragraph 2 above.

Spirg does not disclose the visible pattern including text, cross-hatching, parallel dashes, or dots as stated in claims 7 – 10.

Regarding claims 7 – 10 : Spirg discloses an indicator having a visible pattern which can be a particular color or code but does not mention a particular pattern. Haas et al. discloses a patterned indicator reacting to a threshold parameter and displaying a visual indicator which can be selected from text, dots, bar codes, numerals, etc. ( See Figures 1 – 38 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a visible pattern selected from the group disclosed by Haas et al. in the indicator disclosed by Spirg in order to enhance the visibility in the absence of light or longer distances and provide an indicator related to a particular product or season.

***Allowable Subject Matter***

6. Claim 13 is allowed.

***Response to Arguments***

7. Applicant's arguments filed January 17, 2002 have been fully considered but they are not persuasive.

8. With respect to applicant's arguments regarding the fused and fusible portions : As best understood by the Examiner, Spirg discloses an indicator having a first portion ( 12 ) that irreversibly fuses in response to a threshold temperature and a second portion ( 14 ) exposed to the threshold temperature and fused to form a visible pattern, since fusible, as defined by the Webster Collegiate Dictionary 10<sup>th</sup> Edition is “ capable of being fused ” and fused is defined as “to become blended or joint ”, wherein the first portion ( 12 ) disclosed by Spirg is blended with the second portion ( 14 ) becoming the fusible and fused portions and forming the visible pattern as claimed.

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one person having ordinary skill in the art in possession of Spirg would have been

Art Unit: 2859

obvious to use patterns, i.e., text, dots, numerals, etc., as a visible indication since it is considered well known in the art and an alternate type of indicator.

### *Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (703)305 -5676. The examiner can normally be reached on 8:00 AM - 4:30 PM.

Art Unit: 2859

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7722 for regular communications and (703)308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



Y. Guadalupe  
March 26, 2002

DIEGO F.F. GUTIERREZ  
SUPERVISOR PATENT EXAMINER  
TECHNOLOGY CENTER 2800